



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2004

Mr. Bret Jimerson
Henslee Fowler Hepworth & Schwartz LLP
309 W. 7th Street, Suite 1550
Fort Worth, Texas 76102

OR2004-8947

Dear Mr. Jimerson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211346.

The Carroll Independent School District (the "district"), which you represent, received two requests from different requestors for 1) a copy of a former district employee's personnel file; 2) documents concerning the former employee that the district sent to the Texas Education Agency or the State Board for Educator Certification; and 3) three specified letters. You indicate that the district will provide the requestors with some of the requested information. You claim that the remaining requested information is excepted from disclosure pursuant to section 552.135 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides that a governmental body must ask the attorney general for a decision as to whether information requested of it must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See Gov't Code* § 552.301(b). Further, section 552.301(e) provides that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general 1) a copy of the written request for information, 2) a signed statement as to the date on which the request was received by the governmental body or evidence sufficient to establish that date, 3) written comments stating the reasons why the stated exceptions apply that would allow the information at issue to be withheld from disclosure,

and 4) a copy of the specific information requested or representative samples of it, labeled to indicate which exceptions to disclosure apply to which parts of the documents. *See id.* § 552.301(e). In this regard, we note that the district failed to request a decision from us concerning both requests for information within ten business days of the district's receipt of the requests and failed to provide us with the items required to be submitted to us under section 552.301(e) within fifteen business days of the district's receipt of the requests. Thus, we find that the district failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision from us.

Because the district failed to comply with the procedural requirements of section 552.301 in requesting this decision, the information at issue is now presumed public. *See Gov't Code* § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The district must demonstrate a compelling interest in order to overcome the presumption that the information at issue is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because the district claims that the information at issue is excepted from disclosure pursuant to section 552.135 of the Government Code, we will address the district's claim.

We first note, however, that some of the submitted information is confidential under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA").¹ *See* 20 U.S.C. § 1232g. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See id.* § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). FERPA is incorporated into the Act by section 552.026, which provides that the Act "does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA]." Gov't Code § 552.026. "Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A).

¹Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by statute. Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Public Information Act (the "Act") prescribes criminal penalties for the release of confidential information. *See id.* §§ 552.007, .352; *see also* Open Records Decision No. 325 at 2 (1982).

Generally, FERPA requires that information be withheld from the public only to the extent reasonable and necessary to avoid personally identifying a particular student. *See* Open Records Decision Nos. 332 at 3 (1982), 206 at 2 (1978). We have marked information that identifies students of the district and a student's parents and that must be withheld pursuant to FERPA.

You claim that the remaining submitted information is excepted from disclosure pursuant to section 552.135 of the Government Code. Section 552.135 provides:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under this exception to disclosure must clearly identify the

specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). You state that the submitted information was provided by district employees to the district for the purpose of reporting possible violations of criminal, civil, and regulatory law. Specifically, you assert that the reported actions potentially concern criminal violations of assault, injury to a child, and abandoning or endangering a child. Based on your representations and our review of the submitted information, we find that the district has adequately demonstrated that the conduct reported to the district by these informers concerns a possible violation of criminal, civil, or regulatory law under section 552.135. Accordingly, we conclude that the district must withhold the information that we have marked pursuant to section 552.135 of the Government Code.

In summary, the district must withhold the information that we have marked pursuant to FERPA and section 552.135 of the Government Code. The district must release the remaining submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

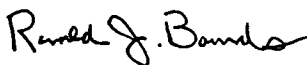
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 211346

Enc. Marked documents

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